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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Amendment of Section 73.622(b)
Table of Allotments,
Digital Television Broadcast Stations.
(Tyler, Texas)

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MM Docket No 01-244
RM-10234

In the Matter of:

Amendment of Section 73.622(b)
Table of Allotments,
Digital Television Broadcast Stations.
(Lufkin, Texas)

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MM Docket No. 01-245
RM-10235

To: Video Division
Media Bureau

OPPOSITION OF CIVCO, INC. TO REQUEST FOR STAY

CivCo, Inc. ("CivCo"), permittee of stations KLTU-DT (Tyler, Texas) and KTRE-DT (Lufkin, Texas), by its attorneys, hereby files its opposition to the Request for Stay ("Request") filed November 21, 2002 by International Broadcasting Network ("IBN") in connection with the *Report and Order* released on October 9, 2002 granting CivCo's requests for substitution of assigned DTV allotments for the above stations.¹ IBN is submitting the Request because its low power stations KIBN-LP and KLGU-LP will be displaced as a result of the DTV channel

Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) and (Lufkin, Texas), *Report and Order*, MM Docket Nos. 01-244 and 01-245, RM-10234 and 10235, (rel. October 9, 2002). In the *Report and Order*, the Commission adopted CivCo's request for the substitution of DTV channel 10 for station KLTU-TV's assigned DTV channel 38 at Tyler, Texas and of DTV channel 11 for station KTRE-TV's assigned DTV channel 43 at Lufkin, Texas.

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changes. In its Request, IBN makes no attempt to provide the required showings that might justify grant of a motion for stay, nor can it. The request for stay must be denied.

It is well established that to warrant a grant of a motion for stay the petitioner must demonstrate *inter alia* that it is likely to prevail on the merits.² IBN cannot satisfy this requirement. The Commission consistently has made clear that low power stations are secondary to full power stations.³ Non-Class A, low power stations will not be protected against the channel changes of full power DTV stations.⁴ IBN's low power stations KIBN-LP and KLGVL are not Class A-eligible facilities and therefore are not entitled to protection against the Commission's decision to amend the DTV Table of Allotments.

In addition, IBN has not met any other requirement for a stay. IBN has not demonstrated that grant of its request for stay is in the public interest nor that IBN would be irreparably harmed unless the requested stay was granted. Many low power stations have been displaced by the Commission's implementation of digital television, because they are secondary to full power stations. IBN, however, is not prejudiced by the adopted channel substitutions. IBN can continue to use its present channels until CivCo completes construction and begins to transmit on

Four factors influence a court's decision of whether to grant a stay: (1) the petitioner must make a strong showing that it is likely to prevail on the merits of its appeal; (2) the petitioner must show that, without such relief, it would suffer irreparable injury; (3) the issuance of the stay must not substantially harm other interested parties; and (4) the petitioner must show the stay to be in the public interest. *Virginia Petroleum Jobbers v. Fed'l Power Commission*, 259 F.2d 621 (D.C. Cir. 1958).

See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) and (Lufkin, Texas), *Report and Order*, MM Docket Nos. 01-244 and 01-245, RM-10234 and 10235, ¶ 7 (rel. Oct. 9, 2002) ("IBN's low power stations, KIBN and KLGVL, are simply not entitled to protection.").

⁴ In fact, the Commission reaffirmed this just one day before IBN's filing of its request. *See* Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Fort Myers, Florida), *Report and Order*, MM Docket No. 00-180, RM-9956, ¶ 1 (rel. Nov. 20, 2002), citing *Establishment of a Class A Service*, 15 FCC Red 6355, 6370-71 (2000).

them. Thereafter, IBN can preserve the low power station operations of KIBN-LP and KLGV-LP by relocating to Channels 14 and 36, respectively. The KLTU-DT and KTRE-DT channel substitutions adopted by the Commission serve the public interest by both hastening DTV service and preserving KIBN-LP and KLGV-LP programming.

IBN easily can remedy the displacement of its low power stations. Rather than needlessly depleting the Commission's limited resources with claims that contradict long-established Commission precedent and the terms under which IBN accepted its own licenses, IBN could submit the displacement relief applications that CivCo provided to IBN at CivCo's own expense. IBN thus can preserve, as desired, the programming services it provides to viewers.

WHEREFORE, for the foregoing reasons, IBN's request for stay must be denied.

Respectfully submitted,

CIVCO, INC.

By: 

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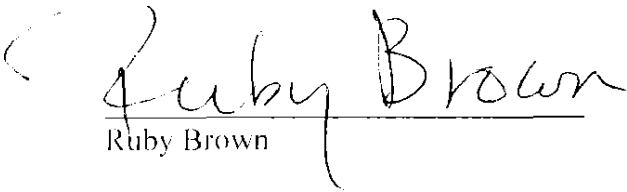
*Admitted in Virginia only; supervised by principals of the firm

Dated: November 27, 2002

CERTIFICATE OF SERVICE

I, Ruby Brown, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 27th day of November 2002, the foregoing "OPPOSITION OF CIVCO, INC. TO REQUEST FOR STAY" was served via facsimile and first class mail to the following:

Paul J. Broyles
President
International Broadcasting Network
P.O. Box 691111
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Ruby Brown